

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of Factfinding: )  
)  
**CITY OF CALIFORNIA CITY** )  
) **PERB IMPASSE**  
Employer, ) **No. LA-IM-172-M**  
)  
and ) **DATE ISSUED:**  
)  
**CALIFORNIA CITY FIREFIGHTERS** ) **February 4, 2015**  
**ASSOCIATION** )  
)  
Union. )

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**Factfinding Panel:**

Impartial Chairperson:

\_\_\_\_\_**Walter F. Daugherty**  
Arbitrator/Factfinder

Employer Member:

**John Ruiz**  
Senior Consultant  
Human Resources & Career Services

Union Member:

**Andrew Roach**  
President  
California City Firefighters Association

**Appearances:**

For the Employer:

**Paul A. Coble**  
Attorney at Law  
Jones & Mayer

For the Union:

**Michael A. McGill**  
Attorney at Law  
Adams Ferrone & Ferrone

## **BACKGROUND AND PROCEDURAL HISTORY**

The California City Firefighters Association (“CCFFA” or “Union”) is the designated bargaining representative for the unit of firefighters employed by the City of California City (“City”). The unit consists of some 13 employees employed in the City’s various firefighter job classifications. The City provides various services including fire and police protection to about 13,000 individuals living within its some 200 square mile area. At certain times, outdoor enthusiasts swell the population to about 100,000 visitors.

With respect to the impasse before the Factfinding Panel (“Panel”), negotiations began some two years ago on the terms of a Memorandum of Understanding (“MOU”) that had expired on June 30, 2010, but had been extended by mutual agreement. In July 2014, the parties mutually agreed to refer the matter to a mediator. Mediation sessions were held on two days during which the parties reached tentative agreement on a successor MOU. This tentative agreement was presented to the City Council, which approved all elements of the accord except the Red Card bonus.<sup>1</sup>

CCFFA was notified of the Council’s actions on the evening of July 29, 2014. It submitted a counterproposal on October 8, 2014 in which it agreed to delay implementation of the Red Card bonus until July 1, 2015, but once implemented the bonus would be paid for all hours worked. This was rejected by the City leading to the impasse before the Panel.

By letter dated December 8, 2014 from the Public Employment Relations Board (“PERB”), the undersigned was advised that he had been selected by the parties to chair the Factfinding Panel. John Ruiz was designated as the City’s Panel Member and the Union selected Andrew Roach as its Panel Member.

At the request of the Chairperson, both parties waived the statutory time limits for the hearing and the completion of the factfinding process. A hearing was held on January 8, 2015 at which both parties appeared. During this proceeding, discussions were had between the parties’ representatives, the City Manager, and members of the Panel regarding resolution of the outstanding Red Card bonus issue. A tentative accord was reached in such regard and the parties reaffirmed their tentative agreements made during the July 2014 mediation sessions. It was further agreed that each party would submit a position statement to be included in the factfinding report. These respective statements are fully set forth below.

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<sup>1</sup>The Red Card or Red Tag bonus is a bonus paid to members who meet the qualifications for deployment to wild fires. The Red Card is renewed annually and, among other things, requires that a physical test be passed before the card is issued. The tentative agreement was for payment of the bonus for all hours worked by unit employees who possessed the Red Card whereas the Council approved payment of the bonus only when deployed on wild fire duty.

## **RELEVANT STATUTORY PROVISIONS**

With respect to the Panel's deliberations, the Meyers-Milias-Brown Act at §3505.4. (d) states:

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

## **POSITIONS OF THE PARTIES**

### **CCFFA:**

Under the MMBA, Government Code Section 3505.5, subsection (d), in arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by 8 criteria. Each of the criteria that are applicable to this factfinding each support the position and proposal brought forward by the California City Firefighter's Association.

The Association is not seeking wage increases, but rather, is seeking to contribute the entirety of its 9% PERS member contribution, in exchange for an offset. In other words, the Association is simply asking to maintain the status quo in pay and benefits, and not be forced to take a wage concession. The City is in a very strong financial condition, which includes a very large ongoing budget surplus and hefty reserve balances. In addition, the Association is paid well below the marketplace, in the County as well as the State. The Association has been without a contract now, going on 5 years. The Association has seen members leave for better jobs, at surrounding agencies, and this will continue to happen. The City has had a difficult time recruiting firefighters to work here, given these ongoing issues. These problems are only exacerbated by the fact that the City, in its last, best and final contract proposal, is asking to its current employees to take a wage concession.

The current issue in this factfinding is this: The City is essentially offering a 5% wage increase over three years, in exchange for employees paying their 9% PERS member contribution. Thus, there is a 4% wage concession that the City is looking for. The Association is proposing, and has proposed throughout these negotiations, various options at bridging that 4% gap, so as not to take a 4% wage concession.

Of the applicable factfinding criteria, the interests and welfare of the public and the financial ability of the public agency and a comparison of the wages in the factfinding proceeding are critical. In March 2012, the voters of the City approved Measure A(12), authorizing the City to levy a special parcel tax on each homeowner in the City. This special tax revenue is dedicated to public safety, both police and fire. The special tax, that passed by a 2/3 vote, declared that the revenue shall be spent only on police and "fire prevention and suppression operations, training and supplies, firefighter and paramedic personnel, equipment and facilities."

At the City's State of the City meeting on June 5, 2014, the City Manager declared that "Thanks to the passage of a special tax to help fund fire and police both are making strides to improve services." According to the City Manager, "[t]he Fire Department is now fully staffed with a new battalion chief. The city now has two chiefs who live in the city. Fire inspection has also been enhanced with each hydrant being inspected annually. Chief Armstrong's concerns are for the new reconstruction of the fire station, which was partially demolished due to mold. Armstrong is also starting a training program for volunteer firefighters for those interested in the field."

Further, the City Manager's statements above are also consistent with the actual financial returns provided by the City. According to the City's financial statement of June 30, 2014, the estimated fund balance (reserve) for the Measure A(12) Fire Suppression fund on July 1, 2013 was \$557,000. Note: this is just the fund balance for Measure A(12) money specially designated for fire services. This reserve fund is completely separate from the general fund reserve balance. According to this document, for fiscal year 2013-2014, Measure A(12) revenues are expected to exceed Measure A(12) expenditures by \$227,751. That \$227,751 is going to then be placed in the fire reserve fund, thereby increasing the fund from \$557,000 to \$784,751. Thus, the Measure A(12) is generating a strong surplus of money, leaving a strong reserve fund at the end of the year.

In addition, in the general fund, according to this same document, the reserve is \$1,978,740. Further, it is expected that revenues will exceed expenditures in the fiscal year by \$691,826, thereby increasing the general fund reserve to \$2,629,363. Thus, even the general fund is generating a strong surplus and leaving a strong reserve balance. Many cities would be envious of this. And in fact, the situation, as reported in the City's Fiscal Year 2014/2015 adopted budget, is actually better than thought before. This document now confirms that the actual audited fund balance (reserve) for the Measure A(12) Fire Suppression fund on June 30, 2013 actually was \$626,118, rather than the estimated \$557,000 that was believed to be there.

Compare Tab D with Tab F.<sup>2</sup> That means that the City ended fiscal year 2012-2013 with almost \$70,000 more than what expected.

In addition, this document estimates that the reserve fund as of July 1, 2014 is actually going to be \$815,139, rather than the \$784,751 estimated previously. Further, the adopted budget anticipates revenues of \$2,907,958 will exceed expenditures of \$2,640,713, in an amount of \$267,245, for fiscal year 2014-2015. That excess surplus for the current fiscal year exceeds the surplus from the past year.

Equally important, the general reserve fund, according to the 2013 document, was at \$1,978,740. The newly adopted budget shows that the actual reserve was \$2,345,376, nearly \$400,000 more than expected. Further, this document shows that the surplus from FY 2013-2014 was actually \$1,099,880, rather than the estimated \$691,826. Further, the expected general fund reserve as of June 30, 2015 is expected to be at an all-time high, \$3,785,559. This general fund reserve is over \$1,000,000 more than it was the prior year.

This information supports both that the public interest supports spending this special revenue on the Fire Department members, and that the City is in a strong financial condition and possesses the ability to pay the Association's proposal. According to the Government Finance Officer Association (GFOA), an association representing the public finance officials throughout the United States, it is recommended that public agencies maintain "unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures." See <http://www.gfoa.org/determining-appropriate-level-unrestricted-fund-balance-general-fund>. Thus, the GFOA recommendation is two months, or roughly 17% of expenditures. Here, the City has a reserve fire fund of over \$1,000,000, which is over 40% of the \$2,640,713 yearly expenditures. And this money can only be spent on fire services. The City has a general fund reserve of \$3,785,559, which is over 125% of the \$3,018,558 yearly expenditures. And since this is the general fund reserve, this money, if needed, could be spent on fire services. 95% of all public agencies would be envious of these numbers! All of these numbers will exceed the GFOA recommendations.

As for a comparison of wages, hours, and conditions of employment, California City firefighters are well below the market. Entry level Firefighter Paramedics employed by the City of California City, who place their lives on the line, make \$14 per hour. A senior, tenured, to step Firefighter Paramedic, after at least 6 years, makes \$18 per hour. When comparing wages, hours and terms and conditions, the only relevant perspective is to look at the region in which the members provides services. In Kern County, there are only three fire agencies: Kern County, Bakersfield and California. Entry level Kern County firefighters make \$28 per hour, topping out at \$34 per hour at top step. See Tab I. Entry level firefighters at Bakersfield make \$27 and top out at \$33. See Tab J. These numbers absolutely shatter the salaries made by Association members. The following charts put these numbers into perspective. Even expanding our

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<sup>2</sup>The tabs refer to documents in the CCFFA's binder submitted at the factfinding.

analysis beyond the County, the Association ranks low state wide. The average (mean) hourly rate for firefighters in the State of California is \$34.44. In addition, you can see that region by region, California City ranks below the 10% percentile across the state. The market data thus supports that the California City firefighters are well underpaid in the market, and should not have to make any monetary concessions in these negotiations.

#### **City of California City:**

The parties have been bargaining for over two years without reaching agreement. This was preceded by a couple of years where the parties operated under a mutual agreement to extend pre-existing terms and conditions. Thus, it has been several years since the parties arrived at agreement or an MOU.

The voters of California City passed an initiative providing Public Safety funding (Police and Fire). In summary this was never earmarked or intended exclusively for employee compensation, but rather was more directed toward capital improvements to replace an out of date and mold-infested fire station. Furthermore, the City is presently running at about 20-21% delinquency rate on collection of the tax revenues which provide this funding.

CCFFA has said that the City should allocate all of the initiative funds to them. But, this one time money comes with a sunset to it. Thus, even if it was all available for employee compensation, which it is not, the City does not want to make ongoing wage commitments in reliance on money it knows won't be there in a couple of years.

As was mentioned during the Fact Finding hearing, the City also confronts the Fire Station reconstruction, which is estimated to cost \$1.3 million. As spoken to by the City Manager, this in itself accounts for much or all of the reserves in the Fire Budget.

In addition, the Special Tax will be coming to an end with an as yet unknown impact to the current operation if the tax is scaled back and/or not renewed, resulting in the General Fund once again having to pick up the obligation.

The parties agreed to meet in informal mediation in California City last July. Meeting over the span of two days, the parties reached a tentative accord, which will be reflected below. When that accord was taken to the City Council, the Council approved all elements of the accord with the sole exception of the so-called Red Card bonus.

This was communicated to the CCFFA via email on the evening of July 29, 2014. CCFFA countered on October 8, 2014, agreeing to the delay onset of the Red Card bonus until July 1, 2015, but to make it a full time bonus. This was rejected by the City, which had by then already declared impasse.

We turn now to the last-best-final positions which emerged from the informal mediation process.

City's Offer	CCFFA Offer	Notes/Comments
Three year MOU	Agreed	
2% step increase across the grades (which had been previously rejected by Council)	Agreed	
3 year payout of sick leave instead of 5 years	Agreed	
CCFFA members to pay 3% of the CalPERS member contribution, increasing by 3% for each year of three year MOU; total of full payment of 9% by end of MOU	Agreed	
1% COLA each year of three year MOU	Agreed	
Increase of \$150 to the cafeteria plan	Agreed	
No mileage restriction on residency	Agreed	
No payment for living within specified response distance of City	Agreed	
"Red Tag" bonus; 6% paid during hours of work on wildfire deployment	5% paid for all hours worked; but following Council decision to only pay for deployed hours, CCFFA countered some months later that it would agree to defer onset of payment of a 5% bonus for all hours worked until July 1, 2015	<p>The tentative accord was payment of 5% for all hours worked, upon the member qualifying for wildfire deployment.</p> <p>Council rejected, but agreed to pay for hours worked on wildfire deployment at 6% instead of 5%.</p>

## DISCUSSION AND RECOMMENDATIONS

The proposals regarding the Red Card bonus have as their genesis CCFFA's desire to avoid a reduction in compensation for bargaining unit employees attributable to their agreeing to pay their entire 9% CalPERS member contribution.<sup>3</sup> As noted, during the factfinding hearing the parties reached agreement on a resolution of this problem that required modifications to their prior respective positions regarding the Red Card bonus. Specifically, the parties reached a tentative agreement that employees who possessed the Red Card would be paid an annual bonus of \$3,500.

The Chairperson has considered this tentative accord regarding the Red Card bonus reached at the factfinding hearing in light of the tentative agreements reached on the other issues as summarized in the City's position statement above and the PERB statutory provisions applicable to the factfinding process. While all of the criteria set forth in Meyers-Milias-Brown Act at §3505.4. (d) have been considered, the Chairperson finds most pertinent those provisions codified at §3505.4. (d) (4), (5), (6), and (7).<sup>4</sup> As such, the Chairperson recommends that the parties include language in their negotiated MOU providing for an annual bonus of \$3,500 for those bargaining unit employees who possess a Red Card. Further, this recommendation is an integral component of the Chairperson's recommendation that the parties adopt and implement the tentative agreements made during mediation as noted above. In summary these are as follows: 1) three-year MOU, 2) 2% step increase across the grades, 3) three-year payout of sick leave, 4) CCFFA members to pay 3% of the CalPERS member contribution, increasing by 3% for each year of a three-year MOU; total of full payment of 9% by end of MOU, 5) 1% COLA each year of a three-year MOU, 6) increase of \$150 to the cafeteria plan, 7) no mileage restriction on residency, and 8) no payment for living within specified response distance of City.

An informal Executive Session was held at the end of the factfinding. It was agreed that the Chairperson would send a draft Report to the Panel members for their review via email, with the Report being so distributed on January 21, 2015. Based on the Recommendations of the Chairperson as set forth in his Report, the Panel Members concur or dissent as follows:

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<sup>3</sup>This "gap" amounts to some 4%, i.e., the 3% COLA increase over the MOU's term and the 2% step in grade amounts to a 5% increase whereas the employees would be paying their 9% CalPERS member contribution.

<sup>4</sup>These are (4) The interests and welfare of the public and the financial ability of the public agency; (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies; (6) The consumer price index for goods and services, commonly known as the cost of living, and (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.



For the Employer:

☐ Concur  
☐ Dissent  
☐ Concur in Part  
☐ Dissent in Part

Report Attached: ☐

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John Ruiz  
Employer Panel Member

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Walter F. Daugherty  
Chairperson

For the Union:

☐ Concur  
☐ Dissent  
☐ Concur in Part  
☐ Dissent in Part

Report Attached: ☐

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Andrew Roach  
Union Panel Member

For the Employer:

☐ Concur  
☐ Dissent  
☐ Concur in Part  
☐ Dissent in Part

Report Attached: \_\_\_\_\_

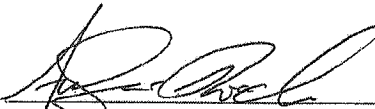
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John Ruiz  
Employer Panel Member

\_\_\_\_\_  
Walter F. Daugherty  
Chairperson

For the Union:

☒ Concur  
☐ Dissent  
☐ Concur in Part  
☐ Dissent in Part

Report Attached: \_\_\_\_\_

  
\_\_\_\_\_  
Andrew Roach  
Union Panel Member